

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

E. JEROME MALRY)	
)	
)	
Complainant,)	
)	
vs.)	No. 02-0273
)	
THE PEOPLES GAS LIGHT AND)	
COKE COMPANY,)	
)	
Respondent.)	

ADMINISTRATIVE LAW JUDGE’S Draft
PROPOSED ORDER

By the Commission:

Complainant filed a Formal Complaint (the “Complaint”) with the Illinois Commerce Commission (the “Commission”) on April 19, 2002 alleging a lack of service and a request for audit and investigation. The Complaint concerned the billing for gas service at 7455 South Merrill, Chicago, Illinois (the “Premises”), including allegations regarding incorrect billing, a balloon bill and estimated gas bills.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for a hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois. An evidentiary hearing was held on January 28, 2003 by Administrative Law Judge Casey and the record was marked Heard and Taken.

At that hearing, the Complainant was represented by Counsel, Attorney Rosemary Triplett. The Complainant, Jerome Malry, was his only witness (Tr.22). Peoples Gas was also

represented by in-house Counsel, Attorney Brian McCarthy. Two witnesses appeared and testified on behalf of Peoples Gas, a Mr. Peter Coyle and Mr. Jeffrey Schaeffer.

I. Procedural History

During the hearing, the Administrative Law Judge made several evidentiary rulings. A total of 47 Exhibits were presented. The Complainant had 41 Exhibits The Respondent had 8 Exhibits. All Exhibits were entered into evidence except Respondent's Exhibits 3 and 8. The Complainant objected to Respondent's Exhibits 3 and 8 and the presiding Administrative Law Judge required the parties to file supporting briefs and reserved his ruling on the admission of Respondent's Exhibits 3 and 8. The presiding Administrative Law Judge allowed the Respondent to lay a foundation and use and present testimony concerning Exhibits 3 and 8. The Complainant filed a written Objection and the Respondent filed a written response on February 11, 2003. The presiding Administrative Law Judge did not rule on the admission of Exhibits 3 and 8.

Between February 13, 2003 and August 3, 2005, no Commission action was taken on this case. On January 26, 2005, Complainant filed a Writ of Mandamus in the Circuit Court of Cook County, See 05 CH-00260 requesting the Commission to enter an order. Thereafter, the current Administrative Law Judge, on August 3, 2005, issued a Notice setting a briefing schedule and pursuant to that Notice the both parties filed an Initial Brief and also Reply Briefs. (See, Complainant's Initial Brief; Complainant's Reply; Respondent's Initial Brief; Respondent's Reply")

II. The Applicable Legal Standards

The Commission is given the authority to hear complaints on "any act or things done or omitted to be done in violation, or claimed violation, of any provision of [the Public Utilities

Act, [220 ILCS 5/1-101, et seq., the “PUA”] or any order or rule of the Commission”. 220 ILCS 5/10-108.

Additionally, several sections of the Illinois Administrative Code are applicable. Under 83 Ill. Admin. Code 280.80(a) a utility may consecutively estimate bills when: (1) the procedure used by the utility to calculate estimated bills has been approved by the Commission; and 2) the word “estimate” appears prominently on the face of the bill, in a manner previously approved by the Commission. Under Section 280.80 (b), it further provides that a gas utility is allowed to consecutively estimate bills when, among other reasons: (1) the customer has otherwise made an actual reading of the meter unnecessarily difficult; or (2) circumstances beyond the control of the utility make an actual reading of the meter extremely difficult. 83 Ill Admin. Code 280.80 (b) (3) and (4).

With respect to balloon bills, under the Commission’s rules, whenever a gas utility issues a bill to a customer after a series of underestimated readings, it must follow 83 Ill Admin. Code 280.100 entitled “Unbilled Service”. 83 Ill Admin. Code 280.100(d) provides that:

When past due bills occur following the issuance of a “make-up” bill for previously unbilled utility service resulting from two or more consecutive estimated bills, utility billing error, meter failure, or undetected leakage or undetected loss of service, except in situations where tampering is involved, and where the “make-up” bill exceeds the otherwise normal bill for such billing period by 50%, a utility shall review the bill with the customer, and shall offer to accept payments toward the liquidation of the amount over a normal bill over a period mutually agreed to by the utility and the customer. This period of time shall be at least as long as the period over which the excess amount accrued. Where the excess billing resulted from undetected leakage or loss of service, the period shall be extended so that the bill rendered will not be greater than a normal bill, plus 50%.

Under this rule, when a gas utility issues a make-up bill that exceeds the normal bill for the period by 50%, the utility must give the customer the same amount of time to pay off the make up bill (without interest) as the period that the bills were underestimated.

Finally, 83 Ill Admin. Code 280.100(a) and (b) limits utilities from sending bills to non-residential customers more than two years after the gas was supplied. 83 Ill Admin. Code 280.100(a) and (b) provides that:

- a) A utility may render a bill for services or commodities provided to:
 - 1) A residential customer only if such bill is presented within one year from the date the services or commodities were supplied, or
 - 2) A non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied.
- b) No customer shall be liable for unbilled or misbilled service after expiration of the applicable period *except in those instances to which* 83 Ill. Adm. Code 500.240(a), 83 Ill. Adm. Code 410.260(c), *or the following subsections of this Section apply.*

III. The Burden of Proof

The burden of proof is on the Complainant to establish the violation. City of Chicago v. Illinois Commerce Commission, 13 Ill.2d 607, 150 N.E.2d 776 (1958), see also 83 Ill. Admin. 200.570 (requires the Complainant to open and close proceedings, indicating that the Complainant has the burden of proof, just as the plaintiff has the burden of proof in the trial courts).

IV. Findings of Fact

A. Complainant's Testimony and Exhibits

a. The billing address

On May 17, 2000, the Complainant applied for gas service at 7449 S. Merrill Ave. Chicago, Illinois ("the Premises"). The Complainant provided that he was seeking an investigation of the bills at the Premises and a deduction for any penalties of approximately \$19,000 and compensation for his time and efforts. (Tr. 22-24). The Complainant testified that he applied for gas service on May 8, 2000, and that he received a gas account number at that time. (Tr.27). The Complainant described the large size of the building in great detail. He stated that there were "39 apartments" and "7 commercial spaces" (Tr.30).

The Complainant testified that the address that was subject to the dispute was 7455 South Merrill, 2136 through 48 East 75th Street, Chicago, Illinois. He stated that the building was a corner building with two addresses. Id. He also provided testimony that the numbering on the Peoples Gas bills showed the address of "7449", but should have been 7455 South Merrill. Plaintiff testified that he paid the bills that were addressed for 7449 South Merrill. (Tr. 94, L 15-16). On cross-examination, the Complainant testified that there were two addresses at issue. (Tr. 84). Those addresses were "7455" rather than 7449, as billed by Peoples Gas, and 2136 75th Street. (Tr. 85, 93).

b. Account numbers, meter and meter location

He testified initially that the account number in question was 4500022187220. The Complainant also testified that the service address was 2136 E. 75th Street and that the meter number was P 2007144. (Tr. 52). Subsequently, he testified about the huge bill that he received. Complainant's Ex. 15. This bill showed that the Account number was 450002157 7073 and the

meter number was P 1683266. The Complainant further testified that there was only one meter – the house meter. (Tr. 50), but that there were separate meters for the apartments and commercial spaces. The Complainant clarified through his testimony that the only issue was the one meter. He testified that “what this hearing’s about, the one house meter.” (Tr. 51).

The Complainant also described the location of the meter and the difficulty of gaining access. He stated, “First of all, you have to get into one of the entrances to get inside the building there is a door that goes to the boiler room area that has to be unlocked and then there’s actually a boiler room that has to be unlocked. So there’s several doors. (Tr. 77). He further testified that during 10/00 and 10/10/01, that only one (1) person, Brett Hardt, had the keys to the boiler room. He further testified that Brett Hardt did not live at the building. (Tr. 95-96). He testified that Mr. Hardt was the “manager of all my properties”(Tr. 96).

c. Bills and deposit request

The Complainant testified that he had no record of contacting Peoples Gas between May, 2000 and May 2001. (Tr. 91). The Complainant testified that he received numerous bills for small amounts under the account number ending in 7220. (Tr. 29- 47.) The Complainant also testified that he was aware that such gas bills were too low for such a large building. (Tr. 92-93 L. 18)

Finally, the Complainant testified that he received a bill dated for 10/21/03 for \$69,024.75 (Tr. 56); Complainant’s Exhibit 15. This bill showed that the Account number was 450002157 7073 and the meter number was P 1683266. The Complainant testified that he was “startled” by Peoples Gas’ request for a Deposit. (Tr. 62.)

d. Installment Payment Plan

Complainant testified that at that same time that he received the large bill that he also received a letter from Peoples Gas. Tr. 56-57. He quoted from the Peoples Gas letter as follows: “ We will be more than happy to establish a monthly payment plan for up to 17 months in which to pay off this balance without any late fees being added to the account.” (Tr. 58, L 7-10). Later, the Complainant testified that he never received the bill related to the offer to start an installment payment plan. (Tr. 63).

e. Records of appointments

The Complainant further explained that he owned at least 8 other commercial properties which included a total of over 300 units or apartments. (Tr. 31). He stated that he used “Tenant Pro System” for the “accounting and all—everything having to do with the running of the properties”) (Tr. 31). He also testified that he used “Outlook” to track dates and vendors (Tr. 32). The Complainant testified that he used one of these systems to track his appointments with Peoples Gas. (Tr. 32-33). He testified regarding Complainant’s business records that he used to track appointments with task numbers. Exhibits 41, 40 and 42.

f. Conversation with ICC and Peoples Gas

The Complainant stated that he contacted the Illinois Commerce Commission. (R. 39). He also testified that he obtained a written response from a Peoples Gas Special Services Representative, Jeffrey Schaffer. (Tr. 40). The Peoples Gas response provided the reason why Peoples Gas had not gained access to premises. He read the Peoples Gas response into the record. It provided that “it had been found that all appointments to read the meters and to transfer services into your name were not kept by you and this is the reason for the delay.” (Tr. 40).

The Complainant was asked whether he spoke with Peoples Gas after the date of the written response. The Complainant, upon further questioning by his counsel, Complainant could not provide a date. The Complainant testified, “Not any date. Just in general.” (Tr. 42). Upon further questioning by his Counsel, regarding what happened, the Complainant testified that “Nothing happened.” A few moments later, the Complainant stated, “I apologize for saying there wasn’t a response.” They did come out--- to get this first reading, they had to come out and read the meters.” (Tr. 43, L 20-22). Thereafter, the Complainant testified that “And for four or five months, I received bills regularly.” (Tr. 44).

g. Estimated bills

The Complainant testified that after Peoples Gas read his meter and gave him a \$7000.00 credit once the Company realized that the bill was overestimated. (Tr. 73).

B. Peoples Gas Testimony and Exhibits

A. Peoples Gas’ Field Inspection of Premises

Mr. Coyle testified that he had been employed by Peoples Gas for 28 years and worked for the last 13 years as a Field Supervisor (Tr.102). He testified that he also conducted high bill investigations and was also trained as a service man in the field for ten years and had done pipefitting and furnace work for many years including the inspection of furnaces and boilers (Tr. 103, 108)

i. The meter number and actual reading

Mr. Coyle testified that on April 25, 2002 that he had investigated the 7449 Merrill Building. Mr. Coyle explained and verified Respondent’s Exhibit 1 as his report of his visit to the premises which verified that the meter number was 1683266 and the reading was 99450. He testified that the Complainant was present during the investigation and there was also a service

guy. (Tr. 104). Mr. Coyle testified that he was at the building to verify the appliances, the building meter and what appliances the building meter supplied. (Tr. 105). Mr. Coyle also had pictures of the meters. (Resp. Ex. 2). Mr. Coyle presented photos which showed the appliances that were connected to Meter No. 168266. Respondent's Exhibit 2.

ii. Meter location

Mr. Coyle described the intricate and locked nature of the Premises as follows: “because it was all locked up, you couldn’t get, anyway. And Mr. Malry, you know. Let me in the front door and guided me through the building to the courtyard to the furnace room and then to the meter room. (“Tr. 105”). He listed the doors that he walked through before getting to meter room and described it as “pretty secure” (Tr 106).

iii. The gas fired appliances and gas usage

He testified that there was one building meter and 39 or 40 other smaller meters for the cooking accounts. (Tr. 106). The building meter was described as a rotary meter that supplied gas for just the heat and hot water for the whole building including 75th street. There was a large furnace. “1,800,000 BTU” hot water boiler (Tr. 107). It was described in fair condition and needed some adjustment. (Tr. 107) He also observed a 250,000 BTU water heater which was relatively new. He testified that the way it was vented that it needed a cap on it and that the company left him a 716 to identify the problem that had to be repaired with water tank (Tr. 110).

The report stated that there were 42 apts. (Resp. Ex. 1). Mr. Coyle testified that he didn’t realize stores were on the premises “so 39 plus the stores came to 42 on 75th street”. (Tr. 112). He testified that the report and pictures were done in order to complete a No. 8 Report pertaining to an ICC or other customer complaints about bills (Tr. 117.)

Mr. Coyle described the gas usage as follows:

“That – the boiler itself will burn 1,800 feet of gas – cubic feet of gas an hour. It’s on for an hour straight, it will burn that much gas straight. Plus, the water heater comes on and off will burn 250 feet of gas an hour, just the water heater by itself.

And with heating a building of that size for 39 apartments, plus, you know, a few stores, it’s on quite a bit”

(Tr. 117 L. 5-13)

It was stipulated that the building did not supply hot water for the commercial spaces (Tr. 123).

Mr. Coyle also testified that he was “not aware” of any other actual readings between May, 2000 and April 25, 2002. (Tr.118)

B. Peoples Gas Investigation of Account Records

Mr. Schaeffer also testified on behalf of Peoples Gas. He testified that he was a Supervisor of Special Services. He had a combined 22 years of experience and that his duties included investigating billing complaints. (Tr. 124). He testified that he had conducted high bill complaints, informal ICC inquiries, Citizens Utilities Board, Presidential inquiries and Better Business Bureau inquires (Tr. 124)

In the course of his duties, he investigated the Complainant’s account for the Premises, which the Peoples Gas identified as 7449 South Merrill.

Mr. Schaeffer looked at numerous bills although the Complainant claimed that the billing was incorrect and improper, a review of each bill shows that those bills connected to a smaller commercial space were marked as “Str” and had a separate meter number. See, Complainant’s Exhibits 4-12.

On the other hand, the gas bills related to the Premises were clearly marked “blg” and were issued under meter no. P1683226 and account no. 4500021577073. See, Complainant’s Exhibit 14, 15, 167, 17, 18, 19, 20, 34, 35, 36, 37, 39 and 43. He explained that the Complaint had an account at 7449 and 2136 E. 75th Street, but that the investigation centered on 7449 Merrill, the Premises. (Tr. 128).

Mr. Scaheffer testified that on or around May 17, 2000, Peoples had scheduled an appointment at Complainant’s Premises in order to read the meter and to succeed the service in Mr. Marly’s name. (Tr.128). He testified that there was no one there to admit and subsequent to that, we were never contacted again to send someone out there. (Tr.129). Mr. Schaeffer testified that the only reason that it was initiated into the Complainant’s name was in May 2001 that a letter was sent and Peoples became aware that he was the responsible party. He testified that service was initiated in his name back to May 17,2000 (Tr. 129).

i. Respondent’s Exhibit 3

In the course of that investigation, Mr. Schaeffer testified that he prepared a summary of Complainant’s account covering the period from when the account began, in May 2000 to January 14,2003 (Tr. 131-132). The account summary was marked as Respondent’s Exhibit 3 for identification. The Complainant objected to the introduction of the summary transcript and this issue was reserved (Tr. 136).Mr. Schaeffer explained the account summary (the “Transcript”) at length. (Tr. 131). He testified that the Transcript showed the occasions of actual meter readings, estimated meter readings, and manual estimated based upon degree day analysis. He testified that the Meter number was P 1683266 and that the account number was 4500021577073. (Tr. 153).

ii. Actual Readings

Mr. Schaeffer reviewed the Transcript row by row to show why estimated readings were present, when bills were deducted and the meaning of the grayed out section of the Transcript, the dates of actual readings and the resulting bill. He testified that a bill for 333 days of service in the amount of \$49,293.50 for the period between 5/18/2000 and 7/17/2001 was sent. This was shown on the Transcript, Line 44. He also testified that Peoples Gas records showed that several actual reads had occurred at the Premises and that the estimated bills were recalculated and re-billed which resulted in an increase (Tr. 143). The actual readings occurred on 8/18/2000; 7/17/2001; 8/16/2001; and 10/2/2001, Respondent's Exhibit 3, Lines 40-44. After rebilling, the net bill was \$53,685. (Tr. 143).

iii. Degree Day Analysis

The Complainant requested a re-bill on a month by month basis. (Tr. 145). Mr. Schaeffer testified that the company therefore conducted another analysis of the bills. From October 2, 2001 to October 17, 2001 and also October 1 to November 16, 2001, the bills were cancelled because the customer had requested the actual usage for each billing period (Tr. 0159-160). This was shown in Respondent's Ex 5.

Peoples Gas completed the rebilling and it was explained in Respondent's Exhibit 3. Mr. Schaeffer testified that it was shown in Lines 36 going up until Line no. 17. (Tr. 146.) He testified that he used the Degree Day Analysis to calculate the amount used. (Tr. 146). Mr. Schaeffer also produced the documents as Respondent's Exhibit 6 which showed each bill and the underlying degree day analysis for each month in question. (Complainant's counsel agreed that she had these documents (Tr. 160- 162)

Mr. Schaeffer also testified that he prepared a degree day analysis for the period between October 2, 2001 to April 25th 2002. (Tr. 167.) Respondent's Exhibit 7 supported this testimony. He explained the degree day analysis (Tr 167- Line 8 – 170, Line 6). He testified that during that period the Premises would have used 6.10 therms per degree day. (Tr170).

He also compared it with another billing period, from May 17, 2000 and July 17, 2001 which showed that the gas used per degree day was 5.534 therms. (Tr. 170.) He testified that this showed consistent usage Id.

He also testified that the Respondent's Exhibit 3 showed credits for all payments received from the Complainant. (Tr. 172.)

He testified that the original bill was \$56,853.62 but because of the customer's request for a manual rebilling, the amount increased by \$4831.77 and caused balance of \$61,685. (Tr. 147). See, Respondents Exhibit 3, Line 36, Line 17.

He testified that because of the rebilling, that the previously charged late fees were wiped out or eliminated up to the February 18, 2002 balance. (Tr. 148, 150). He also explained that \$7169 in dpcs had been deducted from the bills and that the adjustment was shown on Line 11 of the Transcript. The deduction did not apply beyond March 9, 2002. (Tr. 150).

iv. Security Deposits

The deposit was requested because of late payments. (Tr. 153.) Mr. Schaeffer also testified that on the bottom of the Complainant's bills for the period between October 14, 2002 to November 13, 2002, that the deposit request was clearly printed on the bill. (Tr. 152-153). See also, Complainant's Exhibit 29.

v. Installment Payment Plan

Peoples Gas offered to Complainant of 17 months, without interest, to pay the corrected make-up bill. Complainant however, rejected the offer. He acknowledged receiving the letter but failed to take action to show that he accepted it.

vi. Respondent's Exhibit 8 (Peoples Gas Meter reading attempts)

Mr. Schaeffer also testified regarding appointments including the initial turn on appointment. Using Respondent's Exhibit 4, the company's business record showed that a Peoples Gas Representative was at the premises at 1:12 p.m. in the afternoon and could not get in. He testified that Peoples Gas tried to complete the turn on appointment on several occasions. (Tr. 158.) The exhibit showed attempts on August 16, 2001 and October 2, 2001.

He further testified that he had located records from the meter reading department and the records were presented as Respondent's Exhibit 8. Mr. Schaeffer explained that the documents showed the meter reading route and notes taken at the time of the attempted meter reading. (Tr. 181.) He testified that there were numerous entries during the period between which showed for the 7449 address "not H-O-M" which meant not home. (Tr. 183.) See also Respondent's Exhibit 8 which showed meter reading attempts on 5/19/01; 9/21/01, 10/21/01; 5/16/02; and 7/18/02. It showed Peoples attempt to gain entry every other month. Id. In closing, he testified that inclusive of January 14, 2003, that the billing on the account was \$75,664.40. (Tr. 153)

Commission Analysis and Conclusions

Complainant has failed to establish that Peoples Gas is in violation of the Public Utilities Act, 220 ILCS 5/1-101, et seq., or any order or rule of the Commission. The Commission is given the authority to hear complaints of "any act or things done or omitted to be done in violation, or claimed violation, of any provision of [the Public Utilities Act, [220 ILCS 5/1-101,

et seq., the “PUA”] or any order or rule of the Commission”. 220 ILCS 5/10-108. The burden of proof is on the Complainant to establish the violation. City of Chicago v. Illinois Commerce Commission, 13 Ill.2d 607, 150 N.E.2d 776 (1958), see also 83 Ill. Admin. 200.570. The Complainant has failed to meet that burden.

A. The Commission’s Rules Allow For Estimated Bills

Peoples Gas has not violated Public Utilities Act or any order or rule of the Commission with respect to Complainant’s Gas service. The gist of the allegations in the Complaint is that Peoples Gas provided a lump sum or balloon bill and several estimated gas bills and that the \$75,664.40 amount presently sought by Peoples Gas is incorrect. The evidence presented at the hearing shows that the Complaint is without merit.

While a gas utility is required to read the meter every other billing period, the Commission’s rules allow the utility under certain circumstances to consecutively estimate bills. Under 83 Ill. Admin. Code 280.80(a), a utility may consecutively estimate bills when: (1) the procedure used by the utility to calculate estimated bills has been approved by the Commission; and 2) the word “estimate” appears prominently on the face of the bill, in a manner previously approved by the Commission. A careful review of the bills in Complainant’s Exhibit 15-28 shows that Peoples Gas’ bills show in the current usage box when they are based on an estimated reading, as is required in the bill format approved by the Commission in Peoples Gas’ Tariff.

Part 280.80 further provides that a Gas utility is allowed to consecutively estimate bills when, among other reasons: (1) the customer has otherwise made an actual reading of the meter unnecessarily difficult; or (2) circumstances beyond the control of the utility make an actual reading of the meter extremely difficult. 83 Ill Admin. Code 280(b) (3) and (4)

In this case, the May 17, 2000 initial reading did not occur due to the lack of access. (Tr. 129).

Subsequently, the Complainant received gas for 333 days without receiving a bill. After the bill was established, it remained difficult to gain access. Respondent's Ex. 8 produced by Mr. Schaeffer showed the number of times that the meter readers attempted to gain access but the Complainant or his agent were not home.

Further, the uncontradicted sworn testimony from both the Complainant and Mr. Coyle provided that the meter was located in the basement of the premises behind several locked doors. (Tr. 77, 105-106). Therefore, to read the meter, Peoples Gas would have to be given access to the Premises and the room where the meter was located inside the Premises. Moreover, Complainant's testimony it is clear that only one person, Mr. Bred Harte, was available to allow access. He further testified that he did not live there and helped the Complainant to manage at least 8 other large commercial properties. (Tr. 96). Therefore, it is very clear that no one was at the Premises to give access to a meter reader during the vast majority of the time.

Furthermore, despite the fact that Complainant and his agent were rarely at the Premises to provide access, Complainant did little to provide access or meter readings to Peoples Gas. Despite his sophisticated computer system and ownership of multiple properties, the Complainant testified that he had no record of contacting to Peoples Gas to provide meter readings or special access to Peoples Gas prior to May, 2001. (Tr. 91.) Clearly the Complainant had used gas and heated his commercial Premises for almost a year and he was clearly aware that he was not receiving bills.

After Peoples Gas obtained access to read the meter, it quickly sent a make-up bill to the Complainant based upon that reading. Consequently, Peoples Gas' bills which included an initial estimated reading, did not violate the PUA or the Commission's rules. Accordingly, both

subsections of Section 280.80 would apply and Complainant and his evidence fails to show that the lump sum bill or any estimates violated a Commission's rule or that the billing was incorrect.

B. Peoples Gas' Billing of the Account for unbilled Service is in Compliance with the PUA and the Commission's Rules.

The Complainant failed to show that Peoples Gas' bills for the Complainant's account violated the PUA or the Commission's rules. 83 Ill Admin. Code 280.100(d) provides that:

When past due bills occur following the issuance of a "make-up" bill for previously unbilled utility service resulting from two or more consecutive estimated bills, utility billing error, meter failure, or undetected leakage or undetected loss of service, except in situations where tampering is involved, and where the "make-up" bill exceeds the otherwise normal bill for such billing period by 50%, a utility shall review the bill with the customer, and shall offer to accept payments toward the liquidation of the amount over a normal bill over a period mutually agreed to by the utility and the customer. This period of time shall be at least as long as the period over which the excess amount accrued. Where the excess billing resulted from undetected leakage or loss of service, the period shall be extended so that the bill rendered will not be greater than a normal bill, plus 50%. . . . [emphasis added]

This is interpreted to provide that when a gas utility issues a make-up bill that exceeds the normal bill for the period by 50%, the utility must give the customer the same amount of time to pay off the make up bill (without interest) as the period that the bills were underestimated. 83 Ill Admin. Code 280.100(a) and (b) also provide that:

- a) A utility may render a bill for services or commodities provided to:
 - 1) A non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied.
- b) No customer shall be liable for unbilled or misbilled service after expiration of the applicable period except in those instances to which 83 Ill.

Adm. Code 500.240(a), 83 Ill. Adm. Code 410.260(c), or the following subsections of this Section apply. [emphasis added]

83 Ill Admin. Code 280.100(a) and (b) limits utilities from sending bills to non-residential customers more than two years after the gas was supplied.

In this case, Peoples Gas has complied with the requirements in 83 Ill Admin. Code 280.100. It billed Complainant for approximately 13 months of service. Mr. Schaeffer testified that the Company offered Complainant a repayment plan for 17 months, without any late fees, being added to the account. (Tr. 58). See also, Complainant's Exhibit 29.

Peoples Gas offer to Complainant of 17 months, without interest, to pay the corrected make-up bill was in full compliance with 83 Ill. Admin 280.100(d). Complainant however, rejected the offer. He acknowledged receiving the letter but failed to take action to show that he accepted it. Consequently, Peoples Gas's billing of the Complainant is in compliance with the PUA and the Commission's rules.

C. Peoples Gas Also Had Numerous Actual Meter Readings To Support The Amount Of Gas That Was Used At The Premises.

The Complainant's allegations that the bills were incorrect is not supported by the record. There is no question how much gas was used at the Premises. Respondent's testimony and exhibits showed that meter no. 1683266 was used at the Premises. (Tr. 104). The gas meter is the best indicator of how much gas was used - not the Complainant's guesses. Peoples Gas obtained meter readings at the Premises on several occasions. Respondent's Exhibit 3 On August 18, 2000, Peoples Gas obtained a reading of 8595; On July 17, 2001, Peoples Gas obtained a reading of 60128; On August 16, 2001, Peoples Gas obtained a reading of 61298; and On December 2, 2001, Peoples Gas obtained a reading of 63721

It is undisputed that it was a very large building with 39 units that utilized a furnace and a hot water heater. See Respondent's Exhibit 2. The heating specifications for the units was also undisputed. Simply put, Complainant's entire case is simply that he didn't use that much gas but he fails to carry his burden of proof to support this assertion in any manner to allow an objective quantification of the gas used at the Premises over that first 333 days. On the other hand, Peoples Gas has provided numerous approved methods to show the amount of gas used.

Complainant also admits that the Premises is a very large corner building. At the hearing, he bragged that he had so many buildings that he used computer systems to keep up with appointments. As an astute businessman with at least 39 units, it is rather unbelievable that the Complainant continued to pass on heat and hot water costs to his tenants for a one year period between May 17, 2001 and June 15, 2001, but failed to note in his system that he was not receiving a gas bill from Peoples Gas. It is rather convenient that he paid nothing to Peoples Gas during this same period and has continued to receive the benefit of that non-payment.

D. The Degree Day Analysis Supported the Amount Billed.

The Degree Day Analysis is an accepted alternate method of billing for public utilities. *e.g. Rodriguez v. Peoples Gas*, Docket 88-0169 (1988). At the customer's request, Peoples Gas examined each and every month and manually rebilled the customer. (Tr. 145.) Mr. Schaeffer conducted a degree day analysis for each month and provided the worksheet and the final bill to the Complainant. See Respondent's Ex. 6. He also prepared a degree day analysis for the period between October 2, 2001 and April 25, 2002. (Tr 167.) The comparisons showed that when the degree day formulation was used that the customer bills used 6.10 therms per degree day. When compared to the bills based upon the actual reading it was 5.534 therms per degree day which was very close and "consistent". (Tr 170.) Based upon the customer requested manual rebilling,

Peoples Gas determined that the Complainant owed \$61,685.39 at that time. Respondent Ex. 3, Line 17. These bills were presented to the Customer. The Complainant however continued to dispute the bill and the amounts owed to Peoples Gas continued to increase.

E. The Commission's rules allow Peoples Gas to bill for a security deposit.

The Complainant appeared shocked by Peoples request for a security deposit. (Complaint's Exhibit 25.) In fact, he testified that he was "startled". (TR. 62) 83 Ill. Admin Code §280.70(b) plainly allows the Company to request a deposit. Peoples did so on the Complainant's bills. See Complainant's Exhibits 25-28.

E. Respondent's Exhibits 3 and 8 Should Be Admitted into Evidence as a Part of the Record.

Peoples Gas' presentation of Respondent's Exhibits 3 and 8 at the hearing was in complete compliance with the Illinois Rules of Evidence. Although Complainant states that the best evidence rule would bar admission of Respondent's Exhibits 3 and 8, Respondent fully refuted these arguments in its written response filed on February 11, 2003. Therein, Respondent clarified that Exhibit 3, (the "Account Transcript"), was simply a summary of the bills, payments, meter readings and that the Illinois Commerce Commission has required the public utility to provide such Transcripts. (See, Response at Par. 24-26). Moreover, charts and summaries are seen as a form of intelligible presentation. A proper foundation must of course be laid establishing the correctness of the figures in the summary....The originals of the records thus summarized must be made available to the opposite party for examination or copying or both in advance of trial. See, Cleary and Graham's, Handbook of Illinois Evidence, Seventh Edition, § 1001.61. The Account Transcript, Respondent's Exhibit 3, allows any objective third party to understand the totality of the account history as compared with the review of forty or

more separate exhibits which are already of record. See, Complainant's Exhibits 1- 44; Respondent's Exhibits 1-8.

As required by the Rules of Evidence, the Complainant already had possession of the underlying gas bills and degree day analysis that were used to compose the Account Transcript. The Complainant having failed to identify any new information or data presented by the Account Transcript, already had in his possession, in advance of the January 28, 2003 hearing, the best evidence. Therefore, the Complainant's objection to Exhibit 3 is denied.

Similarly, Respondent's Exhibit 8, the meter reading reports, is admitted into evidence as a reliable business record and Complainant's best evidence objection is denied. Respondent's Exhibit 8 was the business records of Peoples Gas, Meter Reading Department which showed the meter readers' multiple attempts to gain access at the Complainant's premises and read the meter (Tr. _183_) Business records are admissible because their purpose is to aid in the proper transaction of the business and they are useless for that purpose unless accurate and the motive to falsify is nonexistent. See, Cleary and Graham, Id. at §803.10. The Respondent's testimony at the hearing showed that the meter reading reports were created and maintained independently of Malry's Complaint and a proper foundation was laid at the hearing. (Response, Para 34-37) Complainant's objection would require the Commission to ignore reliable business records which refute the core of the Complaint, which alleges that Peoples Gas never attempted to read the meter.

Peoples Gas' failure to issue a bill for a one year period and its later estimation of bills in this case did not violate the PUA or the Commission's rules. The testimony of record showed that the Complainant did not receive a bill for the period of time between May , 2000 and July 2001. Complainant however testified that he never attempted to contact Peoples Gas during this

period to request a bill, even though he testified that this was a large commercial property with 39 apartments. The record evidence shows that once Peoples Gas become aware that the gas service had not been billed , and the letter was received from the Complainant , that a full field investigation of the Premises was conducted and a complete review of the account occurred.

Based upon that field investigation, the testimony and evidence of record and the Briefs filed by the parties the Commissions finds as follows:

Finding and Ordering Paragraphs

Based on the foregoing, the Commission, giving due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Respondent, The Peoples Gas Light and Coke Company, is an Illinois corporation engaged in the business of the distribution and sale of gas to the general public in Illinois, and it is a public utility within the meaning of The Public Utilities Act;

(2) The Commission has jurisdiction over the Respondent and of the subject matter of this proceeding;

(3) Respondent's Exhibits 3 and 8 are admitted into evidence and considered a part of the record evidence;

(4) Complainant was the owner of the Premises and received uninterrupted natural gas service between May 17, 2000 and July 17, 2001 and thereafter;

(5) The Premises was metered by meter number 1683226 under Account Number 4500021577073 and is considered a non-residential account;

(6) Complainant received several bills, but after the field investigation of the Premises, Respondent provided bills that were clearly marked with the proper account number and meter number;

(7) The account number for the premises was 4500021572073 and meter number was 1683266;

(8) Respondent provided metered bills which showed the amount of gas used;

(9) Respondent provided a Degree Day Analysis to the Complainant to show the amount of gas used;

(10) Respondent offered the Complainant a 17 month payment plan to make installment payments for the gas used between May 17, 200 and July 17, 2001;

(11) Complainant rejected that plan, and Respondent has not received payment for gas used at the premises during the disputed period;

(12) Respondent's actions on this account were not in violation of the Illinois Public Utility Act or the rules and regulations of the Commission;

(13) The evidence presented at the hearing support a finding that the Complainant owed the Respondent \$75,664.40 as of January 14, 2003;

(14) The evidence presented at the hearing support a finding that the Respondent's actions with respect to the billing of E. Jerome Malry for the service at the Premises were not improper;

(15) This Complaint may be properly denied;

(16) Respondent shall comply with all findings of this order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by E. Jerome Malry against The Peoples Gas Light and Coke Company be, and the same is, hereby denied.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code Sec. 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: _____
BRIEFS ON EXCEPTIONS Due: _____
REPLY BRIEFS ON EXCEPTIONS DUE: _____

Administrative Law Judge